

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 21, 2007

Charles R. Fulbruge III
Clerk

No. 07-50039
Summary Calendar

JOHN E GOREE

Plaintiff-Appellant

v.

TRAVIS COUNTY STATE JAIL; DEPARTMENT OF
CORRECTIONS; NATHANIEL QUARTERMAN

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:06-CV-618

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

John E. Goree, Texas prisoner # 1334846, appeals the dismissal without prejudice of his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies. Goree argues that the Texas Department of Criminal Justice's (TDCJ) grievance procedure was not the proper means to address his complaints and that the I-60 complaint procedure was an appropriate alternative which satisfied the exhaustion requirement. He also argues that the unsanitary conditions at

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the Travis County jail and the absence of durable utensils and drinking cups violated his Eighth Amendment rights.

After the district court's judgment, the Supreme Court held "that failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints." *Jones v. Bock*, 127 S. Ct. 910, 921 (2007). As this action was dismissed prior to service on the defendants, and it is not clear from the complaint that Goree exhausted his administrative remedies, the district court erred by sua sponte dismissing Goree's suit. See *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2007).

The district court's judgment is VACATED and the case is REMANDED for further proceedings consistent with *Jones*.